

The Administrative Law Judge (ALJ) had ordered Dr. Terrance Pratt to conduct an independent medical examination of claimant which was performed April 21, 2003. After the preliminary hearing on July 15, 2003, the ALJ authorized Dr. Pratt to perform the testing on claimant that the doctor had recommended in his report. Implicit in the ALJ's Order is the determination claimant suffered a compensable work-related injury and gave timely notice.

The respondent and its insurance carrier requested review of the issues of whether claimant suffered accidental injury arising out of and in the course of employment and whether claimant gave timely notice.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The claimant was employed as a truck driver and mechanic for respondent. He would drive a concrete mixer truck and occasionally operate a loader vehicle. Claimant testified that the loader did not have any suspension and was a rough ride. And he further testified that the air suspension seat in his concrete mixer truck was broken. As a result he noted that when the vehicle hit a bump the seat would go up but then would fall down and hit metal on metal.

In approximately November 2001, claimant began to experience an onset of pain in his legs and back as he continued working. In late November 2001, claimant sought chiropractic treatment and was referred to a physician. He did not have a personal physician and so he sought treatment with Dr. Stany A. D'Silva.

Claimant testified that he told respondent about the problems he was having. Respondent's witnesses agreed claimant complained of back and leg pain but deny he attributed his problems to work for respondent. However, it is undisputed that on July 23, 2002, claimant told Donald J. Breneman, respondent's manager, that he had suffered injury to his back from riding in the mixer truck with a broken air suspension seat. Claimant continued working for respondent until August 27, 2002.

Steven R. McCarty, respondent's dispatcher, agreed that the seat in the truck was broken and was repaired after claimant notified respondent he was making a workers compensation claim. And he agreed that he had told claimant to put a 2 x 4 under the seat to keep the seat from going down to metal on metal.

The claimant alleged a series of repetitive injuries from November 18, 2001, through his last day worked. K.S.A. 44-520 requires that notice of accidental injury be given to respondent within 10 days after the date of accident. Claimant alleged injury each and every day he drove the vehicle with the broken seat, thus his notice of injury given to respondent's manager on July 23, 2002, was timely.

Claimant alleged injury because of the rough ride of the vehicles at work. Dr. Edward J. Prostic noted that during the course of claimant's employment through August 2002 he sustained injury to his lumbar spine. The Board concludes claimant has met his burden of proof to establish he suffered accidental injury arising out of and in the course of employment.

The Board is not unmindful of the testimony, which claimant denied, that claimant had mentioned prior back injuries and had attributed his limp to that injury. However, even assuming such injuries, it is well settled in this state that an accidental injury is compensable even where the accident only serves to aggravate or accelerate an existing disease or intensifies the affliction.¹

WHEREFORE, it is the finding of the Board that the Order of Administrative Law Judge Steven J. Howard dated July 17, 2003, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of October 2003.

BOARD MEMBER

c: Michael R. Wallace, Attorney for Claimant
James B. Biggs, Attorney for Respondent and its Insurance Carrier
Steven J. Howard, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

¹ *Chinn v. Gay & Taylor, Inc.*, 219 Kan. 196, 547 P.2d 751 (1976); *Harris v. Cessna Aircraft Co.*, 9 Kan. App.2d 334, 678 P.2d 178 (1984).